necessity to suspend judgment on the facts until he has heard all the evidence in this case.

The issues raised as to the extent and application of the relevant sections in the Prevention of Corruption Act are of undoubted national importance and it would certainly aid the course of justice for them to be properly ventilated.

Re-trial ordered.

Solicitors: *C.C. Aiyathurai & Co.*

PUBLIC PROSECUTOR v. JAMALI BIN ADNAN

[O. Cr. J. (Shankar J.) March 13, 1984]
[Johore Bahru — Criminal Trial No. 5 of 1982]

Criminal Law and Procedure. – Charge for possession of revolvers and ammunition – Consent of Public Prosecutor – Validity of consent – Whether error in the consent and charge sheet nullifies consent – Whether accused is entitled to an acquittal and discharge as a consequence of the error – Application to amend charges – Application for an order that accused be given a discharge not amounting to an acquittal on the original charges – Internal Security Act, 1960, s. 57 (1) (a) & (b).

In this case, the accused was charged under section 57 (1) (a) and (b) of the Internal Security Act 1960 (the Act) for possessing 2 revolvers and ammunition. The offence was alleged to have been committed on October 19, 1981. On March 3, 1982 the Public Prosecutor issued a written consent to prosecute the accused.

On July 31, 1982, the accused was brought before the Sessions Court at Johor Bahru in Arrest Case No. 49 of 1982. The name of the accused in the charge sheet was written as Jamal bin Adnan K/P 4264630. The charge was read, explained and understood by him. The consent to prosecute the accused was submitted to the Court. The accused was supplied with a copy of the consent and a copy of the charge. No plea was taken from the accused. The accused was then committed to stand trial at the High Court.

On March 10, 1984, the accused was brought before the High Court to stand trial pursuant to the committal order. At the trial the learned Deputy Public Prosecutor submitted the original consent dated March 3, 1982 and also produced two amended charges which differed in some respects from the original two charges.

The main issue in this case was whether the original consent issued by the Public Prosecutor was valid in view of the misdescription of the accused and the discrepancy in that description as between the consent and the committal order. In the original consent the accused was described as Jamali bin Adunan I/C 4829823 whereas in the committal order he was described as Jamali bin Adnan K/P 4264630. There were material differences between the spelling of the name and the Identity Card numbers appearing on the consent and committal order.

The learned D.P.P. drew the attention of the Court to these differences and proposed to proceed with the case because he had evidence that the person named in the consent and the person who was brought before the lower Court was one and the same person.

The defence counsel's submission was that the apparent error in the description of the accused in the consent and the charge sheet nullified the consent and as such the court should acquit and discharge the accused. It was further submitted that the nullity of the consent also avoided the Committal Order and the accused person in the dock in the trial Court was not lawfully there and should therefore be entitled to an acquittal. The defence further submitted that under Regulation 8 once a Committal Order was made the trial had already begun and since the trial was illegal, a discharge amounting to an acquittal must necessarily follow.

Held: (1) the making of a committal order does not mean that the trial of the accused has commenced. The trial proper will begin only when the accused has pleaded. In this case, no trial has commenced as no plea was taken from the accused and the procedure laid down precludes the taking of a plea. Thus it is hard to see how the Court could be asked to make a discharge order amounting to an acquittal before the trial had even commenced;

(2) section 80 of the Internal Security Act does not make it a statutory requirement that the consent of the Public Prosecutor be in writing. Consent can be given orally and if the case is being conducted by the Public Prosecutor himself, consent is implicit;

(3) as to the amended charges, had the learned Deputy Public Prosecutor wished to proceed with the matter, the Court had the jurisdiction to try the case irrespective of the manner in which the accused came before the Court. It derives its original criminal jurisdiction from section 22 of the Court of Judicature Act 1964 and section 79 of the Internal Security Act, not from anything in the Criminal Procedure Code or the Essential (Security Cases) Regulations;

(4) the control of the criminal prosecution is in the hands of the learned Deputy Public Prosecutor and if he chooses not to proceed with the matter for some reasons, the Court will grant his request. The Court therefore ordered that the accused be discharged on the two original charges in the committal order such discharge not amounting to an acquittal.

Cases referred to:-

(1) *R.R. Chari & Anor* v. *The State* A.I.R. 1959 All. 149.
(2) *Lyn Hong Yap* v. *Public Prosecutor* [1956] M.L.J. 226.
(3) *Abdul Hamid* v. *Public Prosecutor* [1956] M.L.J. 231.
(4) *Lim Seo* v. *Reg.* [1962] M.L.J. 304.
(5) *Public Prosecutor* v. *Oie Hee Koi* [1968] 1 M.L.J. 148.

(6) *Hassan bin Isahak* v. *Public Prosecutor* [1948-49] M.L.J. Supp 179.
(7) *John Thomas Bates* (1911) 6 Cr. App. R 153.
(8) *Public Prosecutor* v. *Chu Wan San & 3 Ors.* – Perak High Court Criminal Trial 8 of 1978 – *unreported.*
(9) *Public Prosecutor* v. *Lau Ting* Johor Bahru High Court Criminal Trial 7 of 1983 – *unreported.*
(10) *Kuppusamy* v. *Public Prosecutor* [1948] M.L.J. 25.
(11) *Public Prosecutor* v. *Goh Kee Chuan* [1967] 1 M.L.J. 174.
(12) *Koh Teck Chai* v. *Public Prosecutor* [1968] 1 M.L.J. 166.
(13) *Public Prosecutor* v. *Khoo Kay Jin* [1973] 1 M.L.J. 259.
(14) *Public Prosecutor* v. *Syed Abdul Bahari bin Shahabuddin* [1976] 1 M.L.J. 87.
(15) *Public Prosecutor* v. *Leonard* [1960] M.L.J. 13.
(16) *Public Prosecutor* v. *Liew Choo Kwang* [1962] M.L.J. 382.
(17) *Public Prosecutor* v. *Goh Kee Chuan* [1967] 1 M.L.J. 174.
(18) *Public Prosecutor* v. *Mohamed Halipah* [1982] 1 M.L.J. 155.

CRIMINAL TRIAL.

Ahmad bin Hj. Maarop (Deputy Public Prosecutor) for the prosecution.

Hassan bin Tan Sri Ibrahim for the accused.

Cur. Adv. Vult.

Shankar J.: On March 3, 1982 the Public Prosecutor issued a written consent to prosecute Jamali bin Adunan I.C. 4829823 for offences under section 57(1)(a) and (b) of the Internal Security Act 1960 (the Act) alleged to have been committed on October 19, 1981. The offences relate to the possession of 2 revolvers and the ammunition for them.

On July 31, 1982 a man was produced in the Sessions Court at Johor Bahru in Arrest Case No. 49 of 1982. The name of that man as set out in the charge sheet is Jamal bin Adnan K/P 4264630. The charge which recited offences under section 57(1)(a) and (b) of the Act was read, explained and understood by him. The consent to prosecute under section 80 of the Emergency (Essential Powers) Act 1979 by the Public Prosecutor was produced and marked. The accused was supplied with a copy of the consent and a copy of the charge. The President thereupon committed the man who was produced before him to stand trial at the High Court.

On March 10, 1984 a man was produced in this High Court to stand trial pursuant to the committal aforesaid. After the case was called the learned Deputy Public Prosecutor submitted the original consent issued by the Public Prosecutor dated March 3, 1982. He also produced 2 amended charges which differed in some respects from the original 2 charges which were tendered in the committal proceedings. The critical difference was that whereas in the consent the name of the accused was *Jamali bin Adunan I/C 4829823* the person who was committed to stand trial in this Court was described in the Committal Order as *Jamali bin Adnan K/P 4264630.* The spelling of the name and the Identity Card numbers were not the same. The other differences in the amended charge sheet related purely to some further particulars of the number of the revolvers and the manner in which the charges had been set out for clarity. These need not detain us as they are not relevant to the issue now before me.

The learned Deputy Public Prosecutor drew the attention of the Court to these differences and stated that notwithstanding them he proposed to carry on with the case because he had evidence that the person named in the consent and the person who was produced in the lower court for trial and subsequently in this Court was one and the same person who was also referred to in the amended charges. But counsel for the defence submitted that in view of the apparent error in the description of the accused and the discrepancy in that description as between the consent and the charge sheet the consent was null and void and that the Court should consequently acquit and discharge the accused. It was submitted that such an Order should be made because the nullity of the consent order also avoided the committal Order and in all the circumstances the accused person in the dock in this Court was not lawfully there and should therefore walk out of Court a free man.

No authorities whatsoever were cited by counsel for the defence in support of this application at this stage. What is more, counsel for the defence persisted in making this application even though his attention was drawn to the proviso to section 80 of the Internal Security Act. His contention was that under Regulation 8 once a Committal Order was made the trial had already begun and since this trial was illegal the discharge amounting to an acquittal must necessarily follow. I rejected this submission and adjourned the matter to March 13, 1984 for continuation after the learned Deputy Public Prosecutor said that he wished to have such an adjournment in order to rectify the consent and

bring it in line with the amended charges upon which he proposed to proceed.

It will be noted that these amended charges relate to the same revolvers and ammunition which were the subject of the original charge and that the place and time when the offences were alleged to have taken place are also the same although the element of control has been substituted for the element of possession.

The penalty for these offences is death and one may be excused for expecting a high standard of perfection in the documentation of all concerned for this trial. In view of the utmost gravity of the matter I have felt compelled to give my reasons in writing for the Order which I have made.

Section 80 of the Internal Security Act (the Act) provides that the prosecution for any offence against the Act shall not be instituted except with consent of the Public Prosecutor. The proviso states that a person charged with such an offence may be arrested and remanded in custody notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained but that the case shall not be further prosecuted until that consent has been obtained and that when a person is brought before a Court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead and the provisions of such law shall be modified accordingly.

Section 79 of the Act makes it quite clear that where the offence is punishable with death, only the High Court has jurisdiction to try the same.

The regulations applicable to the Act are the Essential (Security Cases) Regulations 1975 P.U. (A) 320 of 1975 and the Essential (Security Cases) (Amendment) Regulations 1975 P.U. (A) 362 of 1975. The latter (hereafter referred to as the Amendment Regulations) states that they shall be read as one with the former (hereafter referred to as the Principal Regulations). That offences under section 57 of the Act are covered by these regulations is made clear by Regulation 2 of the amendment Regulations.

Regulation 6 of the Amendment Regulations clearly states that where a security case is triable by the High Court, no Preliminary Enquiry shall be held in respect thereof and the Magistrate before whom the accused is produced shall forthwith commit the accused for trial by the High Court.

Regulation 11 of the Amendment Regulations provides that the trial of a security case shall begin with the charge being read and explained to the accused who shall thereupon be asked whether he pleads guilty to the offence charged or claims to be tried.

If the accused claims to be tried the Court is to proceed to try the case.

In the light of these regulations it is clear to me that the application of defence counsel is wholly misconceived.

In the lower court no plea was taken from the accused. Indeed the procedure provided precludes the taking of a plea and the learned President very properly committed the accused who appeared before him to stand trial in the High Court. The making of the Committal Order in my view does not mean that the trial of the accused commenced when the Committal Order was made.

By way of persuasive authority reference may be made to *R.R. Chari & Anor.* v. *The State*[1] where it was held that an Order of Commitment is no more tantamount to commencement of proceedings before a Court of Sessions then the filing of a complaint or the making of a report by a police officer or the furnishing of information by a person other than a police officer. An Order of Commitment is only a principal requisite for the Court of Sessions taking cognizance as a Court of original jurisdiction. That decision turned upon the wording and impact of the Indian Criminal Procedure Code.

We are here concerned with the very clear wording of the Amendment Regulations which quite clearly demonstrate that the trial proper will begin only when the accused has pleaded. Merely because the case is called and the accused goes into the dock is not in my view tantamount to the commencement of the trial. Those two steps are the end process of the production of the accused from the custody of the relevant authorities to Court for the trial to be proceeded with.

Thus it is hard to see how the Court could be asked to make a discharge order amounting to an acquittal before the trial had even commenced. I have drawn further support for the view that I have taken from Regulation 2(1) of the Amendment

Regulations 1975 which provides that the Public Prosecutor includes the Deputy Public Prosecutor.

Section 80 of the Act does not make it a statutory requirement that the consent should be in writing. In this case the person who was conducting the Prosecution before me is the Deputy Public Prosecutor.

In *Lyn Hong Yap* v. *Public Prosecutor*[2] the Court of Appeal suggested that difficulties which might arise in cases where a consent was required could be avoided if the practice were adopted of producing consent in writing when applying for a Summons or a Warrant of Arrest. In that case oral evidence was admitted apparently from the Bar Table in answer to a question from the Court that the Public Prosecutor had in fact given his consent.

This decision was followed in *Abdul Hamid* v. *Public Prosecutor*[3] where it was held that the consent need not be given personally by the Public Prosecutor and evidence by the learned Deputy Public Prosecutor was admitted to show that he had consented to the prosecution in question.

I have also looked at *Lim Seo*[4] where after completion of the trial and on appeal it was noticed that the original consent was in fact for the prosecution of an offence under another section of the law which carried a lesser sentence. It was therefore held that this was an illegality which could not be cured.

But these cases dealt with the situation on appeal after the trial in the lower court had been completed.

In the case before me the Public Prosecutor is himself prosecuting by his statutory alter ego the Deputy Public Prosecutor. In such a case the Privy Council itself has confirmed in *Public Prosecutor* v. *Oie Hee Koi*[5] that where the prosecution was being conducted by the Public Prosecutor himself, consent was implicit.

After the adjournment, Counsel for the Defence submitted for my consideration the cases of *Hassan bin Isahak* v. *Public Prosecutor*[6] and also the case of *John Thomas Bates*[7]. Those decisions cannot be applied to the facts before me since in those cases there was no consent whatsoever at all as required by law.

In all the circumstances this matter will now proceed and the law must take its course.

After the Court had given the foregoing reasons for refusing to make an order of discharge amounting to an acquittal the learned Deputy Public Prosecutor applied for an Order to be made that the Accused be given a discharge not amounting to an acquittal on the charges which were the subject matter of the Committal Order and this Criminal Trial registered in this Court as No. 5 of 1982. The reasons given for making this application were that it was intended immediately after the Order to produce him in the Court below so that he could be committed afresh on the amended charges for which the learned Deputy Public Prosecutor held a fresh consent which was now thought to be in order.

By way of authority for this application he relied upon the unreported case of *Public Prosecutor* v. *Chua Wan San & 3 Ors.*[8] which was the judgment of Ajaib Singh, J. The case was not available. He also referred to *Public Prosecutor* v. *Lau Ting* [9]. This was a matter which I dealt with where the consent was said to be defective in that it did not cover both the charges and therefore a discharge was granted not amounting to an acquittal so that the accused person could be produced once more in the Court below with a fresh consent and a new Committal Order to be made.

The learned Deputy Public Prosecutor's contention was that whilst the Committal Order stood, the Court was left with no option but to neutralise that Order by granting a discharge not amounting to an acquittal for matters to be put right.

Encik Hassan bin Tan Sri Ibrahim, Counsel for the Defence submitted that the trial had begun when the Accused was produced in this Court on March 10, 1983. He said that since the original consent and the amended charges had already been marked as P1 and P2 it was imperative that the amended charges should be read to the accused in this Court and explained to him. Then he said that the Court should grant a discharge not amounting to an acquittal on the amended charges. If this course was not followed he stated that he would persist in an application for a discharge amounting to an acquittal on the original charges. Not only were the original charges not backed by a valid written consent but also they should be deemed to be no longer in existence since they had been superseded by the amended charges of which notice had been given by the learned Deputy Public Prosecutor under the document marked P2. Defence Counsel went further to submit that this High Court has no original criminal jurisdiction to

try this case unless a committal order has first been made in the lower court.

In response to my suggestion that since the Accused was already before me I had jurisdiction to carry on if the prosecution was prepared to proceed, Defence Counsel said that since there would then be *2 consents* before the Court the position would become a matter of embarrassment to all concerned.

Reference was made to Regulation 6 of the Amendment Regulations for the proposition that a valid Committal was a *sine qua non* to the High Court jurisdiction arising. In response to this the learned Deputy Public Prosecutor replied that since the Committal Order had to be neutralised the safer course would be to grant a discharge not amounting to an acquittal on the original charges. Neither the original charges nor the amended charges had been read to the Accused in the High Court and consequently it could not be said that the trial of the Accused on either of those charges had commenced. The learned Deputy Public Prosecutor indicated that he did not wish to proceed with the matter until this had been done.

In the course of the adjournment to the afternoon for me to make my Order on these new submissions I have had the opportunity of looking into some further authorities. In all the circumstances of this case it seems to me that the proper Order to make in accordance with the provisions of section 254 of the Criminal Procedure Code is to grant the Accused a discharge not amounting to an acquittal. Reference may be made to the decisions of *Kuppusamy* v. *Public Prosecutor*[10] *Public Prosecutor* v. *Goh Kee Chuan*[11] *Koh Teck Chai* v. *Public Prosecutor*[12] *Public Prosecutor* v. *Syed Khoo Kay Jin*[13] *Public Prosecutor* v. *Syed Abdul Bahari bin Shahabuddin*[14].

As to the amended charges, had the learned Deputy Public Prosecutor wished to proceed with the matter I consider that notwithstanding the submission of Defence Counsel I do have the jurisdiction to proceed. I refer in this context to the decisions of *Public Prosecutor* v. *Leonard.*[15] where Thomson C.J. held with reference to the Magistrate's Court that the jurisdiction of the Magistrate's Court does not arise from anything contained in the Criminal Procedure Code but from section 63 of the Courts Ordinance. The Criminal Procedure Code merely regulates the way in which that jurisdiction is to be exercised.

Following that decision came *Public Prosecutor* v. *Liew Choo Kwang*[16] where Ismail Khan, J. held that where an Accused person is before the Court, the Court has jurisdiction to try him irrespective of the manner in which he comes before the Court. This decision was followed in *Public Prosecutor* v. *Goh Kee Chuan*[17].

The original criminal jurisdiction of this Court arises from section 22 of the Court of Judicature Act 1964 and section 79 of the Act, not from anything contained in the Criminal Procedure Code or the Amendment regulations.

As to the absence of necessity for written consent I would also refer to *Public Prosecutor* v. *Mohd. Halipah*[18] where Yusof Abdul Rashid, J. applied the decision of *Public Prosecutor* v. *Oie Hee Koi* to which I referred earlier. But the control of this criminal prosecution is in the hands of the learned Deputy Public Prosecutor and if he in his wisdom chooses not to proceed with this matter because he wishes to put matters right I would hold that that is a good reason for granting a discharge not amounting to an acquittal on the charges upon which the accused has been brought to this Court.

The amended charges which the Deputy Public Prosecutor wishes to pursue only after the fresh consent has been put in has not yet become a matter with which I am immediately concerned since the learned Deputy Public Prosecutor desires first to deal with them elsewhere.

This Court therefore orders accordingly that the Accused be discharged on the 2 original charges in the Committal Order such discharge *not* to amount to an acquittal.

Order accordingly.

Solicitors: *Jalil, Hassan & Partners.*